Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

Carol Ann Levine

Petitioner

v.

Regents of the University of California and Reginald Zelnik

On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of California

PETITION FOR WRIT OF CERTIORARI

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17pp

QUESTIONS PRESENTED

1) California Civil Code section 52.1, AKA The Tom Bane Civil Rights Act, protects "**any individual**" from threats, intimidation or coercion which interferes with "rights secured by the Constitution or laws of the United States, or...this state .... " Did a California Appellate Court abuse its discretion and violate Amendment XIV to the United States Constitution, denial of equal protection of laws, when it decided that the Petitioner did not qualify for this protection because she no longer held the status of employee/applicant at the University upon whose premises the alleged Bane Act violations took place?

2) As a matter of public policy can a federally funded University be exempt from complying with a state law, such as the Tom Bane Civil Rights Act which guarantees "any person" protection from interference with "rights secured by the Constitution or laws of the United States" because the alleged victim was not an employee/applicant?

3) Does retaliation for exposing sexual harassment, long term unpaid labor and plagiarism, under threat of the equivalent of destroying a career (i.e. block graduation after more than a dozen years of academic work), as was alleged in this case, violate the freedom of speech guaranteed by Amendment I of the United States Constitution?

4) Can an Appellate Court properly rule that sexual harassment in the workplace is not by its very nature outrageous conduct?

5) Can an Appeal Court rule that no authority exists for a new attorney to correct admittedly erroneous allegations of a previous attorney?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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Complaint.

APPENDIX B: September 17, 1999 Unpublished opinion of the Court of Appeal of the State of California, First Appellate District, Division Two upholding the dismissal by the Lower Court.

APPENDIX C: December 15, 1999 Supreme Court of the State of California's denial of Petitioner's writ of review.

APPENDIX D: Correspondence from the Petitioner's graduate advisor, Zelnik, expressing pleasure at the Petitioner's improvement during a medical leave of absence and mapping out future academic plans.

APPENDIX E: Letter from the University of California at Berkeley History Department Chair verifying that the Petitioner held official status as a non-registered graduate student. University of California at Berkeley Library documentation demonstrating "non-registered graduate student" as an official category of library users.

APPENDIX F: December 13, 1999 Amicus letter to the State of California Supreme Court by Susan Berk Fogel, Esq. and Paula Pearlman, Esq. Of the California Women's Law Center.

TABLE OF AUTHORITIES CITED

CASES

Haines v. Kerner

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California Civil Code Section 52.1, also known as the Bane Civil Rights Act ..... Pages i, 2,6

RELATED RESEARCH

Gruber, J.E. and Smith, M.D. *Women's response to sexual harassment: a multivariate analysis*. Basic and Applied Psychology (1991) at 544-5.

Gutek, Barbara A. Responses to sexual harassment in gender issues in contemporary society (1993) at 197, 205:

Klein, F. and Rowe, M. Estimating the cost of sexual harassment to the Fortune 500, service and manufacturing firms. Testimony on H.R.I before the House of Representatives Committee on Education and Labor, 102nd Cong., 1st Sess. 169, 209 (1991) In the California Woman's Law Center amicus letter for Levine v. U.C. Regents Supreme Court No. S083172; 1st App. Dist. No. A083084: Alameda Co. Superior Court No. 757295-3 authored by Fogel, Susan Berke and Pearlman, Paula D. December 13, 1999.

National Council for Research on Women, Sexual harassment research and resources, at 34 (1995) In the California Woman's Law Center amicus letter for Levine v. U.C. Regents Supreme Court No. S083172: 1st. App. Dist. No. A083084; Alameda Co. Superior Court No.757295-3 authored by Fogel, Susan Berke and Pearlman, Paula D. December 13, 1999.

Sandier, Bernice, R., The chilly classroom climate: A guide to

improve the education of women, 15-17, 19, National Association for Women in Education (1996) In the California Woman's Law Center amicus letter for Levine v. U.C. Regents Supreme Court No. S083172:1st. App. Dist. No. A083084; Alameda Co. Superior Court No. 757295-3 authored by Fogel, Susan Berke and Pearlman, Paula D. December 13, 1999.

Sandoff, Ronni, Sexual harassment in the Fortune 500,working women at 69, 71 in amicus letter regarding California Supreme Court Case No. S083172:1st Appellate
District No. A083084, Alameda County Superior Court No. 757295-3, authored by Susan Berk Fogel and Paula D.Pearlman.

Zalk, Sue Rosenberg *Men in the academy: A psychological profile of harassers* in Sexual harassment on college campuses, editors notes at 3,5 (Michele A. Paludi, ed., 1996) In the California Woman's Law Center amicus letter for Levine v. U.C. Regents Supreme Court No. S083172:1st. App. Dist. No. A083084; Alameda Co. Superior Court No. 757295-3 authored by Fogel, Susan Berke and Pearlman, Paula D. December 13, 1999.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is unpublished.

The opinion of the Superior Court of the County of Alameda, California appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was September 17, 1999. A copy of that decision appears in Appendix B.

A timely petition for rehearing was thereafter denied by the Supreme Court of California on the following date: December 15, 1999 and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment XIV, Section 1. – Citizenship rights not to be abridged. By incorrectly denying the Petitioner rights secured by the United States Constitution under California's Tom Bane Civil Rights Act, the California Courts violated the XIV Amendment's prohibition against any State denying "to any person within its jurisdiction the equal protection of the laws."

United States Constitution Amendment I – Freedom of Speech. By denying the Petitioner recourse against intimidation and coercion which prevented her from reporting sexual harassment, plagiarism of her long term academic work, and long term unpaid labor, the California Courts abridged and deprived her of freedom of speech.

California Civil Code section 52.1, also known as the Tom Bane Civil Rights Act and which states that all persons are protected from threats, intimidation and coercion which interferes with "rights secured by the Constitution or laws of the United States, or ...this state...." The California Courts incorrectly denied the Petitioner protection under this law because they deemed her not to have been in the employee/applicant status when the alleged offenses occurred.

STATEMENT OF THE CASE

The Petitioner begs the Court's indulgence since she is petitioning in propria persona. She also asks that the Court hold her pleadings to less stringent standards as per Haines v. Kerner 404 U.S. 519, 592 S Ct 594, 30L. Ed. .2d 652 (1972)

Background - Petitioner Carol Ann Levine became a registered graduate student at the University of California at Berkeley in 1979, for the purposes of pursuing a co-joint Ph. D. degree and law degree through demonstrated ability in original research in history and intellectual property, and with the goal of an academic

career. Her graduate advisor and mentor in the History Department was at all times herein mentioned, Professor Reginald E. Zelnik. The University of California at Berkeley is the recipient of federal funding.

The Petitioner pursued her degree as a registered graduate student from 1979 through 1981 when Zelnik sanctioned and encouraged her to take a leave of absence to address a temporary medical problem. (Appendix D)

The Petitioner took leave for most of a University quarter to resolve the medical issue and returned the following quarter. Upon her return later in 1981, Zelnik advised her to continue her degree pursuit as a non-registered graduate student, a common, recognized category, designed to save graduate students tuition expenses. The History Department issued her documentation certifying her status as a non-registered graduate student and requesting that the University library furnish her with a library card. As designated on official University of California letterhead, one of several official categories of University Library usage is "non-registered graduate student". (See Appendix E for the History Department's documentation and library card issued by the University library in 1992 in the Petitioner's name, while she was a non-registered graduate student.) The Petitioner was aware of other graduate students and their advisors following this same practice.

After resuming graduate study in the non-registered status, the Petitioner became subject to a long term course of conduct by Zelnik characterized by repeated sexual harassment, threats, intimidation, long term coerced unpaid work, plagiarism and physical assaults and batteries. The latter included sexual batteries such as touching or fondling her buttocks, even in the presence of others.

During the time of the harassment, Zelnik repeatedly promised the Petitioner that he would see her through the completion of her degree and re-register her when it would become necessary, such as during the quarter when the degree was to be completed. Anytime she protested his transgressions or threatened to expose them, he threatened to block her graduation and, thus, abort her career.

After she ultimately exposed him by revealing his role in the plagiarism, the Petitioner became subject of retaliation for her freedom of speech, in violation of her First Amendment rights – re-registration and achievement of her degree was blocked.

At times when the Petitioner requested re-registration, Zelnik fraudulently told her that he was powerless to intercede on her behalf, when, in fact, he had unilateral discretion and control to approve her for re-registration. He refused to exercise his discretion because plaintiff refused to have sex with him. This was especially true after Zelnik became head of the History Department. The Petitioner did not discover Zelnik's fraudulent conduct until March, 1995, shortly after Zelnik became the History Department's chair.

The student-teacher relationship as well as the harassment, discrimination and wrongful denial of re-admission continued through April of 1995. The ultimate result was that the Petitioner was prevented from realizing both a Ph. D. degree and a law degree and the career that she intended to use these to achieve.

On May 15, 1995 the Petitioner complained of Zelnik's transgressions to Associate Dean of the University of California at Berkeley Graduate Division, Joseph Duggan. A number of meetings and their communications extended into 1996. Duggan

told the Petitioner that she had no civil recourse against Zelnik's alleged sexual harassment, assaults and batteries, threats, intimidation, or interference with her civil rights.

After exhausting her administrative remedies, in September, 1995 the Petitioner filed a complaint making several allegations, including that oppressive acts by Zelnik and the History Department violated her protection under the Bane Civil Rights Act since they deprived her of her rights under the Constitution of the United States, including Amendment I's freedom of speech and Amendment XIV's denial of equal protection of the laws;

Related Research – University professors have power over their students in a number of ways, such as awarding grades, providing or withholding positive recommendations and ultimately graduation. (Zalk, 1996) Social scientific research demonstrates that sexual harassment is usually endured rather than confronted. (National Council for Research on Women, 1995) Due to common situational constraints, victims of sexual harassment rarely request that the perpetrator stop. (Gutek, 1993) According to Klein and Rowe (1991) 50 % of women do not say or do anything when sexually harassed. A review of ten studies found that only between 10% to 15% of women either reported their harassers or reacted with an assertive response. Less than 10% of women in higher education, public sector jobs or manufacturing reported sexual harassment. (Gruber and Smith, 1991) Fear of retaliation and loss of privacy are the main reasons victims of sexual harassment endure their suffering. (Klein and Rowe, 1991) A study by Sandoff reported that that 95% of women who report sexual harassment suffer retaliation and loss of privacy. (Fogel and Pearlman, 1999) Sandler (1996) has documented the prevalence of sexual harassment on college campuses and its deleterious emotional, physical and educational effects.

Discussion of Questions 1, 2, 3) - According to the Appellate Court, the Lower Court sustained the defendant's demurrer to causes of action under the Bane Act, in essence on the ground that

the Petitioner, Levine, was not discriminated against in the employee/applicant capacity. The Appellate Court found the ruling supported on that same ground. (Appendix B at pages 5,6,18)

The rulings constitute abuse of discretion since the Bane Act clearly states that its protections are for "any person" and does not exclude non-applicant/non-employees of Universities even when the alleged violations are committed on University property. As a graduate student, albeit non-registered, the Petitioner suffered Zelnik's transgressions in a student-teacher relationship, but also as any person and, therefore, was protected by the Bane Act.

Although the Petitioner was in essence an employee/applicant in her student-teacher relationship, arguendo, even if she were not technically so, would that mean she was ineligible for these fundamental civil rights protections? There are tens of thousands of graduate students, many of whom have at one time or other fallen into the category of "non-registered graduate student". As a public policy issue of utmost importance, when members of this large group enter a University campus anywhere in California, which they constantly do at a high rate, do they forfeit their basic civil rights protection under the Bane Act which carries with it rights secured by the United States Constitution? For members of this large present and future group, when they enter a University campus, its offices, and other facilities, are they entering a barren legal wasteland, devoid of Constitutional and other civil rights?

In this case the pattern and practice of sexual harassment, unpaid academic labor for Zelnik under threat and coercion, physical assault and battery continued for more than one dozen years as Zelnik continually promised the Petitioner that if she complied he would eventually grant her re-registration and sign off on her work so that she could complete her Ph. D. degree. He never made good on these promises.

Discussion of Question 4) - Petitioner's allegations of sexual

harassment, threats, intimidation, and physical assaults and batteries were stated in Petitioner's pleadings to the Lower Court and noted by the Appellate Court on p.17 of Appendix B where that Court quoted the following from the pleadings:

" 'In addition to numerous verbal threats against plaintiff, Zelnik also physically assaulted and battered plaintiff on numerous occasions in conjunction with defendant's verbal threats'; those threats were of; 'severe and longlasting adverse repercussions if plaintiff exposed Zelnik's wrongful conduct or personal interest in and relationship with plaintiff to others.'"

Remarkably, the Appellate Court found that the aforementioned acts by Zelnik were not "sufficiently extreme and outrageous to qualify." [for the intentional infliction of emotional distress] (Appendix B, at p.24) In equating the physical assaults and batteries[1] the victim suffered with "mere insults, indignities, threats, annoyances, petty oppressions or other trivialities" Appendix B, at p. 25, the Court opined that sexual harassment in and of itself is not necessarily "extreme and outrageous" behavior."

Such a statement can be seen as setting a potentially dangerous precedent and even permitting some forms of sexual harassment.

Discussion of Question 5) - The Court of Appeal concluded that no authority exists for honest correction of mistaken allegations as justification for contradicting previous erroneous pleadings. In this case the corrections were advanced by the attorney who was hired to replace an attorney who had filed erroneous pleadings. In large part, the reason the Petitioner hired this new attorney was to correct those prior errors for the sake of the case's integrity.

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[1] At all times herein mentioned the Petitioner is and was a five foot one inch woman who weighs and weighed 85 to 95 lbs. and Zelnik is approximately 6 foot 4 inches tall and weighed approximately 200 lbs. He was literally twice her size.

The public policy implications and impact on the integrity of the judiciary of such a ruling are staggering. Since the Appellate Court used the existence of contradictory pleadings as a reason to dismiss, in effect, it means that in violation of an attorney's ethical duties, that attorney must knowingly assert erroneous allegations or risk case dismissal because of the Defendant's assertion that the now corrected allegations constitute a sham. This contradicts the very essence of a judicial system which aims at honest dealings, including truthful correction of error.

If the Court of Appeal was correct in its conclusion that there exists no authority for honest correction of mistaken allegations as justification for contradicting prior erroneous pleadings, then the Court should take this opportunity establish such authority for the benefit of the bar, the bench and the public at large, a significant portion of which already holds a less-than-favorable impression of the integrity of attorneys and the court system.

REASONS FOR GRANTING THE PETITION

If the California Appellate opinion is allowed to stand tens of thousands of graduate students in California, and especially those who are women, will be deprived of protection from and recourse against sexual harassment, intimidation, and coercion which interfere with rights secured by the United States Constitution and laws.
Sexual harassment will be encouraged through its lack of prosecutability and, in particular, women's rights will be set back many years.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Carol Ann Levine

Carol Ann Levine
Petitioner in Propria Persona
Date:_____